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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/729,693	12/06/2000	Shantha C. Nalur	8265-366	8558

28765 7590 11/06/2002

WINSTON & STRAWN  
PATENT DEPARTMENT  
1400 L STREET, N.W.  
WASHINGTON, DC 20005-3502

EXAMINER

PADEN, CAROLYN A

ART UNIT	PAPER NUMBER
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1761

15

DATE MAILED: 11/06/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Applicati n No.

09/729,693

Applicant(s)

NALUR ET AL.

Examiner

Carolyn A Paden

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-15, 17, 19, 20 and 23-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29 is/are allowed.
- 6) ☒ Claim(s) 1, 6, 7, 9, 12-15, 17 and 25-27 is/are rejected.
- 7) ☒ Claim(s) 2-5, 8, 10-12, 19-24 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 14. 6) ☐ Other: \_\_\_\_\_

Applicant urges that he was merely responding to the directions of the examiner in paper #13 and that the format for Paper No. 12 was improper. Examiner will try to correct these errors in the future.

The rejection of the claims over Herzing has been dropped.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 6, 7, 9, 12, 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Krawczyk (5,505,982) for reasons of record.

Applicant argued in paper 13 that Krawczyk is not material to the claims because sorbitan monostearate is not an emulsifier in Krawczyk. This is factually incorrect because at column 10, lines 32-33 the sorbitan monostearate is described as a surface-active agent. Also at column 3, lines 15-25 the sorbitan ester is described as a compound that could be found in a book on emulsifiers. Applicant argues that the melting point of the emulsifiers is not set forth in the reference. One would have anticipated that the melting of the emulsifier in example 1 would fall within the

temperature of the claims because the reference in example 1 states that a heated temperature of 71C assures that the ingredients are melted. Claim 7 further states that the chocolate composition "substantially maintains its structure up to a temperature of at least about 36C." It is well known in the art that chocolate products typically "melt in the mouth." One would anticipate that such a chocolate product would maintain its structure at 36C because this temperature is below body temperature.

The origin of the monoglyceride in claim 6 does not carry any weight in the product claims.

Claims 13-15, 17 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Varvil (4,335,157) as further evidenced by Gunstone for reasons of record.


Varvil discloses fluid shortening that contains 4-10 parts of monoglyceride with the balance being liquid vegetable oil. Gunstone provides the physical properties of monoglycerides, especially the HLB values are shown at page 228 and the melting points are shown at page 364. The prior art teaches fluid shortening from oil and monoglycerides, generally. The claims define the selection of higher melting monoglycerides, specifically. Varvil states that despite the wide variation in

melting points, the process of including an emulsifier stabilizes the overall product (column 6, lines 48-55). Thus applicant has defined a specific monoglyceride by its melting point but this monoglyceride is a specific subset of monoglycerides generally that are shown in Varvil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7am to 3:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
CAROLYN PADEN 11-4-02  
PRIMARY EXAMINER  
GROUP 1300 1761